

§ 204.33

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penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for federal, state and local income taxes; Social Security taxes, including Medicare taxes; federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld. (See 5 CFR 581.105(b) through (f) for items required by law to be withheld, and therefore excluded from disposable pay for the purposes of this regulation.)

Employee means a current employee of the Securities and Exchange Commission, or other agency, including an active duty member or reservist in the U.S. Armed Forces or a former employee (or former active duty member or Reservist in the Armed Forces) with a current pay account.

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the Department of the Treasury at 31 CFR parts 900–904.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the Chairman's supervision or control, except that nothing in this regulation shall be construed to prohibit the appointment of an administrative law judge.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

Program official means, for the purpose of implementing this offset regulation, the Comptroller or designee.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s), at one or more officially established pay intervals, from the current pay account of an employee, without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or re-

quired by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.33 Pre-offset notice.

A program official must provide an employee with written notice at least 30 calendar days prior to offsetting his/her salary. A program official need not notify an employee of: any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment. When required, the written notice must include the following:

(a) The nature, origin and amount of the indebtedness determined by the Commission to be due;

(b) The intention of the Commission to collect the debt through deductions from the employee's current disposable pay account;

(c) The frequency and amount of the intended deductions (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of the Commission's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(e) The employee's right to inspect and copy Commission records relating to the debt (if copies of such records are not attached), or if the employee or his or her representative cannot personally inspect the records, the right to request and receive a copy of such records. The Commission will respond to a request for inspection and/or copying as soon as practicable;

(f) The opportunity, under terms agreeable to the Commission, to enter into a written agreement to establish a schedule for repayment in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (31 CFR 901.3(b));

(g) The employee's right to a hearing conducted by an official arranged by the Commission if a petition is filed as prescribed by §204.35, Petition for pre-offset hearing. Such hearing official will be either an administrative law judge or at the chief administrative law judge's discretion, another hearing official who is also not under the control of the head of the agency;

(h) The method and time period for petitioning for a hearing, including a statement that the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(i) If a hearing is requested, the hearing official will issue a final decision, based on information presented to the hearing official, at the earliest practicable date, but no later than 60 days after the petition for the hearing is filed unless the employee requests and the hearing official, for good cause or in the interests of justice, deems it necessary to extend that time period (5 CFR 550.1104(d)(10));

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(l) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; and/or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority.

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) The employee's right to a prompt refund if amounts paid or deducted by salary offset are later waived or found not owed to the United States, unless otherwise provided by law or contract; and

(m) The specific address to which all correspondence shall be directed regarding the debt.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.34 Employee response.

(a) *Introduction.* An employee must respond to a pre-offset notice, if at all, within 15 calendar days following receipt, in one or more of the ways discussed in §204.34, Employee response, and §204.35, Petition for pre-offset hearing. Where applicable, the employee bears the burdens of proof and persuasion.

(b) Responses must be submitted in writing to the program official who signed the pre-offset notice. A timely response will stay the commencement of collection by salary offset, at least until the issuance of a written decision. (See §204.37, Extensions of time). Failure to submit a timely response will be treated as an admission of indebtedness, and will result in salary offset in accordance with the terms specified in the pre-offset notice.

(c) A response filed after expiration of the 15 day period may be accepted if the employee can show that the delay was due to circumstances beyond his or her control or failure to receive notice of the time limit (unless otherwise aware of it).

(d) *Voluntary repayment agreement.* An employee may request to enter into a voluntary written agreement for repayment of the debt in lieu of offset. It is within the discretion of the program official whether to enter into such an agreement, and if so, upon what terms.